Let’s Reform the Senate

# I. Introduction/Background: Why the Senate is Broken

The U.S. Senate is the least representative body of its kind in the world. [source, source, source] If it were a senate for a particular state, the Supreme Court would strike it down as unconstitutional. [source, but find primary?] And it has been growing less functional for the past [X]. (look at source abt history and how it used to be less democratic)

The representation point I go over in detail [on this page], so I will only briefly summarize it here. There are a number of problems with the Senate, each of which is solved by at least one of the solutions proposed below. Those are:

* Unrepresentative of diversity by race/gender/religion/etc
* Unrepresentative of the US population by party (this has been growing worse in recent years, because for the first time the partisan divide is starting to be along small/big state lines [cite 538])
* Unequally representative of citizens; a vote in Wyoming is 67 times more important than one in California
  + Relatedly, most states have become reliably only one party, which results in the other party spending no resources campaigning there and spending fewer resources on them in Congress. [cite]
  + Smaller states get more funding per capita than big states reliably because of that small state bias
* campaign stuff idk

HISTORY

The Senate was created in 1789(?) at the first(?) and only Constitutional Convention (caps?) in our history. It is a result of one of the two major compromises at the convention, sharing that dubious distinction with the now-removed [3/5ths Compromise]. Essentially, smaller states threatened to walk out of the convention if they were not given equal representation, and the Senate was the result. This was more palatable at the time that it is now, with the largest state being only about ten times the size of the smallest [link my page again – hey I should put in header links for parts on that page, and also this one] (as opposed to the current 68x difference), but even then several of the Founding Fathers were deeply unhappy with it. [relevant James Madison quote]

SUMMARY

[reminder about all the powers the Senate has and the stuff it does]

# II. Solutions: Ways to Fix the Senate (2014 words)

This part lays out each solution in turn for proposed ways to fix the senate. These should be fairly detailed, and link to more in depth readings where possible. The first three are pretty plausible in the current political climate (and could all be done – not mutually exclusive); the last three are much more radical, harder, and mutually exclusive with each other. ([123] could go with either 4 or 5, but not 6.)

For each, note 1) whether it benefits one party more than the other 2) how feasible/likely it is

## 1. Statehood for Washington, D.C. and Puerto Rico **X**

DESCRIPTION: Puerto Rico and Washington, D.C. are both poised to become states in the near future, which helps the Senate become less white (DC is idk 60% black, PR is 98% Hispanic). By any consistent standard they’re ready to become a state: their citizens want it, PR is bigger than whoever in area and population, DC has the highest GDP per capita of any state and there are two states smaller than it.(Also, it’s absolutely constitutional to admit DC.) Remember that state admission used to be common, and often the bar for consideration was only 60k people! (cite) It’s only in the last few decades that we’ve gotten used to having a set number of states.

Proponents: Lots of people, idk

Feasibility: Very! Might be a bill in Congress rn? Good chance for happening in the next couple years

What it fixes: A small amount of the lack of representation, particularly for racial diversity, plus their own taxation without representation stuff

Partisanship: Clearly benefits the Democrats, particularly DC, which is some ridiculous percent blue. That’s why it’s suddenly popular again

Read more:

## 2. The Filibuster: Two (and a half) Paths **X**

### Intro **X**

The filibuster has also been in the news recently. A *very* brief summary: essentially, in order to close debate and vote on a bill, 60 senators must vote for ‘cloture’ (and the Majority Leader must agree). Most bills require only a simple majority to pass, but that is moot if the bill cannot be voted upon, and so (except under certain circumstances where the filibuster has been removed) even when a majority of senators agree, sometimes a bill cannot pass. In the current circumstances, this means the 10 most moderate Republicans must agree with the Democrats in order for the Senate to pass a bill.

If you think this sounds like a poorly designed system, that’s because the filibuster was an accident of history. In 1804, VP(?) Aaron Burr suggested a number of changes to the Senate rules, for the purpose of making its processes easier and less obscure. One of the provisions he removed, thinking it was of little use, actually left behind a loophole that led to the situation we have today. This was only noticed 60+ years later, and since that time its history has mainly been a weapon against civil rights.

Finally, it’s important to note that the filibuster could be removed at any time, by a simple majority of senators. The Senate can dictate its own rules at will, as specified by the Constitution, and so over time the Senate has carved out a few exceptions where the filibuster cannot be used, which allows at least a bare minimum of legislation to pass. It is entirely within the power of the current Senate majority to abolish the filibuster altogether; the only thing stopping them is tradition and resistance to change.

### Make Them Talk (1/2 solution) **X**

Change the filibuster so senators have to waste time actually talking until the other side gives up rather than the current status of it being automatic (which it was changed to in the 1970s so that the Senate could function more efficiently). Makes it more painful to use, less likely to be used on small bills, and most importantly Joe Manchin and Kyrsten Sinema have expressed some acceptance of the notion, unlike removing the filibuster altogether.

Proponents:

Feasibility: One of the simplest in this list. Only convince Manchin and Sinema of the idea, and it will happen.

What it fixes: Lack of doing anything; minority rule (kinda)

Partisanship: Currently strongly favors Democrats; in the longer term is equal or perhaps slightly favoring to Democrats (because Republicans are overrepresented and such)

Read more:

### Nuke the Filibuster **X**

Remove the filibuster altogether.

Proponents:

Feasibility: Again, just convince Sinema and Manchin. (Other people might also need some convincing; this is a slightly more controversial idea.)

What it fixes: Same as above but more

Partisanship: same as above

Read more:

### Change the Filibuster to be Pro-majoritarian **X**

This proposal is the most interesting and least well-known around dealing with the filibuster. It is covered in much greater detail in the next section, but in summary: Gould et al. recommend a change to cloture so that the filibuster is not removed, but rather than requiring 60 senators to overcome, it requires a majority of the US population.

Proponents: Gould et al.

Feasibility: changing senate rules same as other versions

What it fixes:

Partisanship: Kinda democratic? Right now? But mostly nonpartisan I think

Read more:

## 3. Election & Campaign Finance Reform **X**

Some of the problems, esp. stuff like diversity, comes from how we run our elections and what candidates can make it in the system. There are a *lot* of proposed reforms here, so I’ll only list them briefly, but there are links if you want to read more.

### HR1 **X**

House Resolution 1, the For the People Act of 2021, is the omnibus voting and campaign finance bill which the Democrats chose to label their highest priority bill (thus ‘1’). It has already been passed by the House of Representatives in March, and now the challenge is to pass it through the Senate as well. An overview:

* Election integrity – gerrymandering ban, protections for minority and disenfranchised communities
* Voting access/rights – modernize registration, expands vote by mail, gives felons the right to vote
* Campaign finance report – protect against foreign influence, increase transparency in political ads and donations
* (Maybe find Opening Arguments episode breaking it down?)

### Other **X**

For an overview of a bunch of different reforms in this area, try *Economic Realities of Political Reform*. [link] Looking a little further into the past, in 1976 the Senate released a report[link] with recommendations for the functioning of the Senate in great detail. A few more radical reforms in this area: (check these aren’t in the other things)

* Elect Senators with [Ranked Choice Voting], which in general elects a more representative person, and [source??] gives diverse candidates a better chance. It could also lead to more parties (I think?)
* Publicly fund elections
* ??

(most of the overview here should be in the intro probably?) Talk about HR1 and detail some of what it does (link both to actual bill and a summary because the bill is LONGGG). Also briefly mention the 1970 commission with some similar findings (maybe).

## 4. Reallocate Senate seats **X**

There are a few ideas for reallocating Senate seats or changing the makeup of the Senate to make it more representative and democratic. One of those is [covered in great detail below], but I’ll list the others here:

* Add 100 senators allocated using [MMP] voting. (This is somewhat similar to the Senate Reform Act below, but MMP voting is a whole extra layer of interesting and complicated.) – no source
  + Feasibility: constitutional amendment/convention
* [find source] Keep the seats themselves exactly the same, but change voting rules in the Senate such that each senator’s vote counts for as many ‘points’ as there are people in their state, and passing a bill requires getting the support of over half the total points/population
  + Feasibility: only requires changing senate rules! so on a practical level not bad, just convince a majority to do it
* [covered below in more depth] Professor Orts of XYZ proposes that rather than having a fixed number of seats, we start with each state getting one seat. Then divide the population by e.g. 100 (to get approx.. 3 million) and allocate further seats using that number as a ‘unit’ – so having 6 million people means you get a second seat. Alternatively you can look at this as: get the average pop per state, divide each state’s population by that number, and allocate that number of seats to the state, with any number below 1 rounding up to 1 and all other rounding being standard (above .5 rounds up, below rounds down).

## 5. Redraw the Map **X**

An alternative way to make Senate seats more representative would be to alter current state lines in some way to be more evenly distributed in population. This has been suggested a number of times over the years, but proposals tend to fall into two categories.

### Divide and Combine

Professor Burt Neuborne, a law professor at NYU, suggests dividing states. This has precedent: five states [need link] have been created and admitted to the Union in that way, and the process is the same as any admission of a state (except that the legislature of the state has to agree to divide). Congress could allow any state with a large enough population (Neuborne suggests 20x the size of the smallest state) to divide in half and become two separate states. Using the 2010 census [note: update to 2020!!), six states would fall under this category and be able to divide. [graph??] A smaller ratio rebalances representation even more – Neuborne notes that the ratio between the largest and smallest states when the Constitution was ratified was 6 to 1, so perhaps that would be a good benchmark. (NOTE: check – probably total pop not just voting?)

Notably, Neuborne also points out that this solution is not particularly beneficial toward either party, though the Democrats might have a very short-term advantage. The division of Texas might give the Democrats a couple extra senators, for instance, but dividing California might allow the Republicans to pick up a seat or two.

Kristin Eberhard, director of democracy and climate policy at the Sightline Institute, echoes Neuborne’s suggestion and adds combining states as well as dividing them. There are 21 states which each contain less than 1% of the national population, many of which sit next to each other. Allowing them combine would lessen their Senate representation but increase representation in the House, and become a more powerful state overall.

Proponents: Professor Neuborne, Kristin Eberhard

Feasibility: more doable than you would expect (but still not that duable) Wouldn’t require a constitutional amendment, since this is already within the power of Congress, and could be decided on a state-by-state basis, meaning the entire nation wouldn’t have to agree

What it fixes:

Read more: Neuborne WSJ OpEd, Book, Fulcrum article, [Eberhard book?]

Partisanship: Not a lot

### Redraw the Whole Thing

Going even further, we could redraw the entire map. There have been [a number] [of different] [maps] proposed over the years, but in general the idea is to create states which are both more equally-sized and more representative of cultural and economic connections. The boundaries drawn during the creation of territories or colonies are not particularly related to today’s America, and plenty of states have extremely distinct sub-areas. Eastern Oregon, for instance, [is trying to] become part of Idaho, with which it shares much more similarity than the urbanity of Oregon’s west coast.

Proponents:

Feasibility:

What it fixes:

Read more: Neuborne WSJ OpEd, Book

Partisanship:

## 6. Abolish the Senate **X**

DESCRIPTION: Remove the Senate entirely. This is the most extreme option, and probably the most difficult, but it would certainly fix the problems listed above. Former Representative John Dingell, the longest-serving member of Congress in American history, suggested [link] combining the two chambers of Congress into one. Other options include abolishing with no changes to the House of Representatives or replacement with a citizen’s veto. [SOURCE, also explain?]

Proponent(s): John Dingell, ??

Feasibility: Would probably require a constitutional (article V) convention, which would be the first since 178?.

What it fixes: Everything, maybe! There would probably be other problems, but the opportunity to start fresh would clear the current slate pretty thoroughly.

Partisanship [come up with a better name seriously]: Heavily favors Democrats, because the Republican small-state advantage in the Senate makes it consistently overrepresented [link]

Read more: Atlantic article, memoir

[maybe with reference to that comparative international paper?]

# III. Proposal: The SRA and the Pro-Majoritarian Filibuster

Now we get deep into the weeds.

In this proposal, I will advocate for the Senate Reform Act proposed by Professor Eric Orts, combined with the pro-majoritarian filibuster from Gould et al. (both covered briefly above).

## How it Works

### The Senate Reform Act

The mathematics of the Orts proposition work as follows.

First, get our “unit” number by dividing the population by 100. (This could be another number; 100 just results in about 100 Senate seats like we have now, and the math is easy to do.) Orts uses the census estimate of 2017; since the 2020 census data recently came out, we can use more up-to-date numbers.

Total resident population of U.S. in April 2020: 330,759,736

1% of the total population: 3,307,597

Next, divide every state’s population by this number, to get the ratio between that number and the state population (or put another way, the percent of the unit population that that particular state’s population is). For instance, Idaho would get 0.556, because its population is 55% of our 3.3 million unit. Florida would be 6.512, because its population is 651% of 3.3 million (or 6.5 times 3.3 million).

Using these numbers, we assign Senate seats. Any number with less than one unit gets 1 seat. Beyond one unit, we round normally: states with 1.5 units or more round up to 2 seats, whereas less than 1.5 units rounds back down to 1. The results (again, with 2020 census data):

1 seat – 26 states

2 seats – 12 states

3 seats – 5 states

4 seats – 3 states

6 seats – New York

7 seats – Florida

9 seats – Texas

12 seats – California

The end result is 111 senators from the 50 states.

Other technical details: Senators from the 26 smallest states could be grandfathered in and allowed to serve out their terms, with the state’s second seat being removed with whichever senator’s term is up first. The seats would keep to the same staggered 6-year cycle, shown on Orts pp. 2005-2007. Senate seats would be updated the same way as House ones currently are, with the decennial census.

**Problems Remain**: This is more proportional, but some states still have much more per-voter power than others. In general, the very smallest states still have the most disproportionate advantage, but after that it is at least somewhat more random. Louisiana fares the worst, with its 4.6 million citizens still only meriting a single senator.

### The Pro-Majoritarian Filibuster

*Democratizing the Senate from Within* suggests a change to the cloture rules so that debate can be closed by, instead of 60 senators, a majority of the *population*. That is, this “nukes the filibuster” insofar as only 50 senators are now needed for cloture, but it requires a popular majority in addition to a senate majority. For instance, this would mean that in the current system the 25 smallest states could not collectively call for a bill to be voted on, even though they comprise 50 senators, because those senators only represent approximately 15% of the U.S. population.

[maybe put under What It Means?] This is potentially much better than merely removing the filibuster entirely, because it guards against the consequence of minority rule – that is, nuking the filibuster is all well and good in that it gives the majority party more power and the minority party has less of a stranglehold, but that’s only more democratic and fairer if the majority party actually represents the popular majority. In the current situation of disproportionate small-state representation favoring the Republicans, this is not guaranteed. In fact, the Republican party has held a Senate majority in 12 of the last 20 years but has never represented more than half of the U.S. population in that time. Nuking the filibuster would currently favor the majority of the population (Democratic senators currently represent 56% of the US), but in the longer term it only favors the majority if the popular majority holds a Senate majority. This proposal addresses that concern.

**Problems remain**: Doesn’t fix representation of small state problems completely, as a majority of senators is still required to pass any bill. The “fix” is that it makes representation unequal in both directions: the advantage of large states is that the votes of their senators are very valuable. This is certainly fairer than the current system, but balancing inequality with inequality is not an ideal solution.

[combining section here maybe?]

## What it Means

The SRA doesn’t result in perfect representation. The senator from Wyoming still only represents 576 thousand people, while the Louisiana senator represents 4.7 million. But at least now the senator representing the most people only represents about 8 times as many people as the senator representing the least, as opposed to the current situation of a California senator representing *67* times as many people as a Wyoming one.

[comparison graph!]

More equal representation makes a difference, too. Two senators do not have as much power, time, or influence as 12, and we see that reflected in the current political system. Per capita, many small states receive much more federal funding than large states, for instance. [other examples?]

In addition to more representation, this gives interesting choices for the larger states to elect their senators differently. States could hold senate elections with Ranked Choice Voting, which would likely result in multiple parties (and probably even more than just Democrats and Republicans) being chosen. Texas, for instance, might end up with three Democrats, three Republicans, and three Libertarians. California would almost certainly pick up a couple Republicans from its more rural areas. So not only is there more representation in terms of people per senator, but there is also more chance for people within a state to be represented by a senator they elect.

A few other interesting repercussions follow from this act. For instance, it’s probable that new states would have an easier route to statehood, as all current territories would only add one senator to the 111, which is easier to stomach than 2 for the party less likely to gain that seat.

### Filibuster Reform

This proposal combines very neatly with the Senate Reform act.

## Can We Do It I: Constitutionality

Orts argues, thoroughly, that his proposal is constitutional. As he is a law professor and I am decidedly not, I have left that argument to him, but you may read it [here] (pp. 2010-y). For the purposes of this page/paper, we assume that the Senate Reform Act is constitutionally viable.

Filibuster reform is indisputably constitutionally viable. It would only require a change in Senate rules, which is something that the Constitution explicitly leaves entirely to the Senate, and is little different than any other change to the filibuster in recent times (e.g. when it was removed for the purposes of judicial confirmations).

## Can We Do It II: Political Feasibility

### SRA

The Senate Reform Act is a non-partisan suggestion and does not clearly benefit either party. It likely is slightly more attractive to Democrats, because it corrects for [small state bias towards republicans], but it has its own advantages for the GOP. Splitting bigger states into several senators allows Republicans to compete in big blue states like California that they currently have no chance in. (Hey, it might also make Republicans more in favor of RCV, which would be great.) I haven’t run numbers (yet), but there’s no particular reason to believe that this will benefit either party more in the long run.

That said, this particular variant of the SRA is directly harmful to the interests of the 26 states which would all lose a senator. This is likely to be the largest political obstacle to the Act, and Orts suggests perhaps a Rule of Two Hundred would be more palatable, using 2 senators as a floor rather than one.

### Filibuster

In the short term, the pro-majoritarian cloture rule benefits Democrats. (This is convenient, since that’s the party in power right now.) It is in fact even more to the Democrats’ advantage than simply removing the filibuster, because at present the Republican party is a minority of the population (especially with regards to which states they represent) and unlikely to have both a popular and a Senate majority. However, it is also something more likely that moderate Democrats could get behind, since it is explicitly fairer and more representative of the people.

The place where this *could* get Republican support is if it were combined with the Senate Reform Act, actually. Republicans in Congress currently represent a minority of the population specifically because larger states tend to be blue, but if those states get more senators (plenty of whom may end up Republican and turn them into purple states), that popular majority the Democrats have goes away.

# IV. Conclusion

stuffffff

Call to Action?